

G-008/CN-95-514

NOTICE AND ORDER FOR HEARING

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs  
Tom Burton  
Marshall Johnson  
Dee Knaak  
Don Storm

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Application of  
Minnegasco, a Division of NorAm Energy  
Corporation, for a Certificate of Need for a  
Large Liquefied Gas Storage Facility

ISSUE DATE: December 22, 1995

DOCKET NO. G-008/CN-95-514

NOTICE AND ORDER FOR HEARING

**PROCEDURAL HISTORY**

On December 4, 1995, Minnegasco filed an application for a certificate of need to construct, own, and operate a 7,000 Mcf/day propane-air, peak-shaving facility near Alexandria, Minnesota.

As part of the project, Minnegasco planned to build twelve 30,000 gallon propane storage tanks. This portion of Minnegasco's project fits the definition of "large energy facility" under Minn. Stat. § 216B.2421, subd. 2(e). Minnegasco is therefore required under Minn. Stat. § 216B.243 to obtain a certificate of need prior to siting or construction.

A copy of the Company's certificate of need application is on file in the offices of the Department of Public Service, Suite 200, 121 Seventh Place East, St. Paul, MN 55101-2145 and is open for public inspection during regular office hours.

On December 14, 1995, this matter came before the Commission for consideration.

**FINDINGS AND CONCLUSIONS**

**I. JURISDICTION; REFERRAL FOR CONTESTED CASE PROCEEDINGS**

The Commission has jurisdiction over applications for certificates of need for large energy facilities under Minn. Stat. § 216B.243. The statute requires the Commission to hold at least one public hearing under the Administrative Procedure Act before acting on this or any other application for a certificate of need. Minn. Stat. § 216B.243, subd. 4.

The Commission finds that it cannot satisfactorily resolve all issues raised by the Company's application on the basis of its filing and the single public hearing required under the statute.

The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

## **II. ISSUES TO BE ADDRESSED**

Minn. Stat. § 216B.243 and Minn. Rules, parts 7851.0010 to 7851.0400 set forth criteria which must be met to establish need for proposed large energy facilities, including the proposed propane storage tanks. Parties to this proceeding shall address whether the proposed facility meets these criteria.

## **III. PUBLIC PARTICIPATION**

Minn. Stat. § 216B.243 encourages public participation in certificate of need proceedings. The statute requires at least one hearing to obtain public opinion on the application, and requires the Commission to designate an employee to facilitate citizen participation in the hearing process.

The Commission has designated a staff member, David L. Jacobson, to coordinate public participation in this proceeding. Mr. Jacobson may be reached by telephone at (612) 297-4562 and by FAX at (612) 297-7073. His address is 121 Seventh Place East, Suite 350, St. Paul, MN 55101-2147.

Members of the public need not become formal parties to participate in the hearing process. They are encouraged to attend the public hearing and to submit testimony and exhibits. Persons who cannot attend the public hearing and wish to comment may submit written comments to the Administrative Law Judge. The Commission will require the Company to publish notice of the public and evidentiary hearings in newspapers throughout the state, to encourage public participation.

## **IV. PROCEDURAL OUTLINE**

### **A. Administrative Law Judge**

The Administrative Law Judge assigned to this case is Judge Steve M. Mihalchick. His address and telephone number are as follows: Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota 55401-2138; (612) 349-2544.

### **B. Hearing Procedure**

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62 (1994); the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200. Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 117 University Avenue, St.

Paul, Minnesota 55155, (612) 297-3000.

Under these rules parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with Judge Mihalchick within 20 days of the date of this Notice and Order for Hearing. Failure to appear at the hearing may result in facts and issues being resolved against the party who fails to appear.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions. They should take note that any material introduced into evidence may become public data unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2 (1994).

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Margie Hendriksen, Special Assistant Attorney General, 121 Seventh Place East Suite 350, St. Paul, Minnesota 55101-2147, (612) 296-0410.

The times, dates, and places of public and evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

### **C. Intervention**

Persons wishing to become formal parties to this proceeding shall promptly file petitions to intervene with Judge Mihalchick. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

### **D. Prehearing Conference**

A prehearing conference will be held in this matter on Tuesday, January 16, 1996, at 9:30 A.M. in the Small Hearing Room at the Commission offices, 121 Seventh Place East Suite 350, St. Paul, Minnesota 55101-2147.

Persons intending to intervene in the matter should attend the conference, prepared to discuss time frames and scheduling. Other matters which may be discussed include the locations and dates of public hearings, discovery procedures, and similar issues.

### **E. Time Constraints**

The Commission is required to approve or deny a certificate of need within six months of the

submission of an application. Minn. Stat. § 216B.243, subd. 5 (1994). The Commission asks the Office of Administrative Hearings to conduct contested case proceedings in light of these time constraints.

**F. Application of Lobbying Provisions**

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 *et seq.* (1994), apply to certificate of need proceedings. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Minnesota Ethical Practices Board, telephone number (612) 296-1720, with any questions.

**G. Ex Parte Communications**

Restrictions on *ex parte* communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

**H. Investigation by the Department of Public Service**

The Commission requests the Department of Public Service (the Department) to initiate an investigation to determine the reasonableness of granting a certificate of need to Minnegasco.

The Company shall facilitate the Department's investigation in every reasonable way.

All parties shall furnish adequate responses to all reasonable information requests from other parties within eight working days of receipt.

**ORDER**

1. A contested case proceeding shall be held on the Company's certificate of need application. The proceeding shall begin with a prehearing conference on Tuesday, January 16, 1996, at 9:30 A.M., in the Small Hearing Room, Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, MN 55101-2147.
2. The Commission requests the Department to initiate an investigation to determine the reasonableness of granting a certificate of need to Minnegasco. The Company shall facilitate the Department's investigation in every reasonable way.
3. At least one public hearing shall be held in this matter at a time and place determined by the Administrative Law Judge after consultation with the Commission.
4. All parties to this proceeding may serve information requests on any other party.

Information requests shall be answered within eight working days of receipt.

5. Minnegasco shall provide notice of the public and evidentiary hearings in newspapers of general circulation at least ten days prior to the start of hearings. Such notice shall be in the form of visible display ads. The Company shall consult with Commission Staff on the timing, text, and distribution of such ads prior to publication. The Company shall file proofs of publication of such ads from the newspapers selected.
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (612) 297-1200 (TDD/TTY) or 1 (800) 657-3782.

ATTACHMENT A

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS  
100 Washington Square, Suite 1700  
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION  
121 Seventh Place East Suite 350  
St. Paul, Minnesota 55101-2147

In the Matter of the Application of  
Minnegasco, a Division of NorAm Energy  
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MPUC Docket No. G-008/CN-95-514

OAH Docket No.

NOTICE OF APPEARANCE

Date of Hearing:

Name and Telephone Number of Administrative Law Judge:

Judge Steve M. Mihalchick  
(612) 349-2544

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: \_\_\_\_\_

DATE: \_\_\_\_\_